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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,929	09/29/2003	Frederick E. Shelton IV	END5124.0517366	1636
26874	7590	02/02/2005		
FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202			EXAMINER WEEKS, GLORIA R	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/673,929	SHELTON ET AL.	
	Examiner	Art Unit	
	Gloria R Weeks	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/29/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings were received on February 27, 2004. These drawings are acceptable.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 line 2, in reference to the retract mechanism, the phrase "is a user control input" is found to be indefinite since the limitations preceding this phrase already disclose the retract mechanism as being user controlled.

Claim 5 recites the limitation "the handle" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7-10, 12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. (USPN 5,509,596).

In reference to claims 1-5, 7-10, 12 and 14-17, Green et al. discloses an instrument, comprising: an end effector (18) responsive to a longitudinal firing motion to perform a closing

motion; a shaft (16) distally connected to the end effector (18); a firing member (38, 138) slidably receiving by the shaft (16) to transfer the firing motion to the end effector (18) between an unfired position and a fully fired position, the firing member being a textured¹ (141) or having a rack (40) for traction biasing the firing member for multiple firing trigger depressions by an operator; and an anti-backup mechanism comprising: a locking plate (46) including an aperture (70) circumferentially encompassing the firing member (38, 138), the locking plate (46) pivotal between a locking position (figure 13) wherein the aperture lockingly engages the firing member (38, 138) and an unlocking position (figure 14) wherein the aperture slidably engages the firing member (638, 138), a locking device (36) responsive to the firing member (38, 138) having traversed from the unfired position toward the fully fired position to tilt the locking plate (46) to the locked position, and a user controlled retract mechanism (134) responsive to a retract condition to position the locking plate (46) to the unlock position when the firing member is fully fired (column 11, lines 30-52).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 11 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al.

(USPN 5,509,596) in view of Green et al. (USPN 5,040,715).

¹t **x·tur** (tĕks'cher) noun 3.a. Th appearance and feel of a surface: *the smooth texture of soap; the rough texture of plowed fields.* b. A rough or grainy surface quality: *Brick walls give a room texture* verb, transitive
t x·tured, tex·tur·ing, tex·tures To give texture to, especially to impart d sirabl surface characteristics to *The American Heritage © Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company.
Electronic version licensed from INSO Corporation; furth r reproduction and distribution restricted in accordanc with the Copyright Law of the Unit d States. All rights reserved.

In reference to claims 6, 11 and 13, Green et al. discloses an instrument, comprising: an end effector (18); a shaft (16); a staple cartridge (114) received in an elongated channel connected to the shaft (16), and actuated by a firing member (38, 138). Green et al. does not disclose the end effector having a pivotable anvil.

Green et al. teaches an instrument including an end effector (103) comprising: a pivotable anvil (136) coupled to an elongated channel (134) receiving a staple cartridge (137), the elongated channel (134) being connected to a shaft (124); wherein a firing member (118) is operably configured to actuate the staple cartridge (137). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the anvil of Green et al. ('596) to the pivotable anvil of Green et al. ('715) for the purpose of allowing the instrument to operate in enclosed areas that are not fully accessible externally (Green et al. '715-column 3, liens 29-36).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

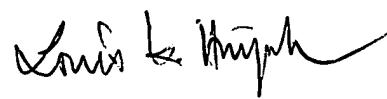
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721

grw
January 28, 2005


LOUIS K. HUYNH
PRIMARY EXAMINER